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TAGS: ETRD ECON KIPR NO
SUBJECT: HOLD THE LINE: NORWAY'S SPECIAL 301 DESIGNATION

REF: A. 3/13/09 EMAIL (ETCANUEL TO JURBAN)
1B. 3/12/09 EMAIL (JURBAN TO ETCANUEL)
1C. OSLO 117
1D. 2008 OSLO 95

Classified By: Ambassador Benson K. Whitney, Reasons 1.4(b) and (d)

11. (C) Summary. As Washington agencies consider the Special 301 Watchlist, Post wishes to strongly emphasize its earlier recommendation (Reftel B) that the GON should remain on the list. Norway was first listed in 2008 (Reftels C,D). Per Ref B, Post is aware that there is an internal USG discussion on removing the GON from the Watchlist. Doing so would trigger several negative results, including:

-- setting a bad precedent that countries designated on the Watchlist can conduct business as usual, with no negative implications,
-- destabilizing inroads made in Norway as a result of the listing,
-- undermine confidence in USG by industry and local pro-business organizations, and
-- send a negative message to GON that the USG does not follow through with matters.

This issue will be on the agenda at key, high-profile trade and economic meetings between U.S. and Norwegian officials, most notably the forthcoming Informal Commercial Exchange (ICE) talks between the Department of Commerce and Norway's Ministry of Trade and Industry. For these reasons, in addition to the central points noted in its recommendation cables (Reftels C,D), Post strongly supports keeping the GON listed. End Summary.

Background: The Pharma Problem

12. (SBU) The issue has a long history. Prior to 1992, Norway granted patent protection only to the manufacturing process for a drug's active ingredient, as opposed to the active ingredient itself. These "process" patents provide weaker protection than "real" or "product" patents in that they open the door for generic manufacturers to claim to have found a new process to produce a branded drug, hence selling the generic in the local market does not infringe the branded drug's patent. U.S. pharmaceutical companies have calculated that a majority of their local corporate sales are at risk due to this weak patent protection.

13. (SBU) Since 2006, the Ambassador and Pol/Econ officers raised this issue countless times with senior GON official, including the Ministers of Trade and Industry and Health. Embassy officers continue an extensive dialogue with affected

U.S. pharmaceutical companies, the local American Chamber of Commerce and other foreign missions whose domestic pharmaceutical companies are also negatively affected by the Norwegian patent laws.

¶4. (SBU) The existing Norwegian patent protection regime has led to serious financial losses for U.S. pharmaceutical companies. As a result of the patent protection issue, U.S. companies were forced to restructure their Norwegian operations, and cut approximately half of their employees in Norway.

Post-Listing Results: Pressure Produces Results

¶5. (SBU) While the GON policy has not changed its policies since the 2008 designation, there have been real results.

These include:

-- Heightened public profile and increased dialogue on this matter, involving the GON, USG and/or private industry. Local industry believes the listing forced the GON into dialogue.

-- Willingness by industry (and possibly the GON) to entertain creative solutions to the matter. For example, the local industry lobbying group, LMI, in consultations with DC-based lobbying group PhRMA, proposed focusing on the GON precluding future generic intervention into the Norwegian market.

A clear reflection of this progress was Norwegian PM Stoltenberg's recent visit to an American pharma company, where he said that the patent case would be discussed again in his political party's annual meeting. Further, certain LMI members will be meeting with the PM on March 17 to broadly discuss the current listing and possible measures to satisfy industry's concerns.

Delisting the GON: Back to the Future?

¶6. (C) Post understands that there is consideration of delisting Norway, relabeling the pharma situation as "market access issues" rather than deficiencies (Ref B). Doing so would produce real, unintended negative consequences for the USG.

¶7. (C) If the GON is removed from Special 301 Watchlist designation, partly based on the fact that the country did not change legislation as a response, a bad precedent is set.

It could be presumed by others that the USG will simply take a country off its list whenever it does not act within a year. This in effect undermines the strengths that designation carries. It will embolden the GON and others to do "business as usual." Furthermore, hinging a delisting on the fact that no legislation change has passed within the last year seems very shortsighted. Any expectation that a modern democracy can easily pass complicated legislation within a year may make us look foolish and out of touch.

¶8. (C) Alternatively, a delisting could be perceived as a USG indication that we simply made a mistake in listing Norway in the first place. This of course will undermine the credibility of the Special 301 List altogether as well as completely undercutting all the USG and industry efforts in Norway. Industry and pro-U.S. business organizations in Norway will be stunned should the listing be revoked. An assumption will be made that, on a key economic issue, the USG will not stand its ground. It is unrealistic to conceive that this major trade issue would be remedied in one year.

¶9. (C) We believe that the increased leverage we have seen with the GON as a result of the listing will immediately disappear if Norway is delisted. Quite simply, re-characterizing the listing as an issue affecting market access carries much less influence, and clout, and Norway will take it as a sign we no longer really care about the matter.

Potential Implications Go Far Beyond Trade

¶10. (C) While the trade and industry implications of a delisting are serious and real, the more profound impact is likely to be felt in our broader foreign policy relationship with the GON. This is a government that desires to cut a bold path on the international stage. It is actively seeking new roles to achieve its goals. In that process, it has been willing to break ranks with the U.S. and others. So for example, it recognized the Palestinian Unity Government (despite the Quartet's views). The USG strongly tried to deter GON action but the GON after an internal struggle concluded it was safe to go it alone. Should the decision to delist follow this, we believe that GON MFA officials and Labor Party politicians will conclude that there is little reason to act on USG remonstrances and that they can outwait us on any issue. This will be an extraordinarily unfortunate lesson for them to learn.

Timing Is Poor

¶11. (C) Given the forthcoming ICE talks in DC, delisting will create a thorny issue for negotiators. At the very least, the GON will likely hear that there is a USG solid support for relisting--which has the real possibility of undermining any possible breakthroughs reached during the talks. Timing really could hardly be worse.

Conclusion

¶12. (C) In short, we see a myriad of problems with a delisting. Since this is a time-limited problem with a natural ending as early as 2012 (the date when most of the pharma companies' patent protections will end under the current GON legislation); we strongly believe it is worth the USG's while to keep Norway on the list. This may result in a breakthrough over the next year or so. If it does not, removing Norway in 2012 will be a natural ending to the process while not undermining our position or arguments.

WHITNEY